UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - : 09 Cr. 722 (MGC)

PAUL GREENWOOD, :

Defendant. :

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GOVERNMENT'S SENTENCING MEMORANDUM

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November 24, 2014

BY HAND DELIVERY

The Honorable Miriam Goldman Cedarbaum
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Paul Greenwood,
09 Cr. 722 (MGC)

Dear Judge Cedarbaum:

The Government respectfully submits this letter to advise the Court of the pertinent facts concerning the substantial assistance that defendant Paul Greenwood ("Greenwood") has rendered in the investigation and prosecution of other persons. In light of these facts, the Government requests, pursuant to Section 5K1.1 of the United States Sentencing Guidelines (the "Guidelines"), that the Court sentence the defendant based on the factors set forth in Section 5K1.1(a)(1)-(5) of the Guidelines.

On or about July 24, 2009, Greenwood, was charged in Indictment 09 Cr. 722 (MGC) (the "Indictment") with conspiracy to commit securities and wire fraud, in violation of 18 U.S.C. § 371 (Count One); securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2 (Count Two); commodities fraud, in violation of 7 U.S.C. §§ 60(1) and 13(a)(2) and (5), and 18 U.S.C. § 2 (Count Three); wire fraud, in violation of 18 U.S.C. §§ 1343 and 2 (Counts Four and Five); and money laundering, in violation of 18 U.S.C. §§ 1957 and 2 (Count Six).

On or about July 28, 2010, the defendant pled guilty to Counts One through Six of the Indictment pursuant to a cooperation agreement with the Government.

I. Background

A. Greenwood's Background And Formation Of WG Trading

Greenwood is a 64 year-old United States citizen who resides in North Salem, New York. Greenwood has a BA in Psychology, an MBA, and a Doctorate in Economics, all from UCLA. Greenwood is married and has two adopted children.

After completing his education, Greenwood was a college professor for four years. He entered the business world in 1975. In 1979, Greenwood met Walsh, who was the head of options trading at Kidder Peabody. That same year, Greenwood and Walsh, and another man, started their own firm. Over the next 9 years, the firm, which eventually became known as Walsh Greenwood and later WG Trading Advisors, successfully employed a series of different trading strategies.

In 1987, Walsh and Greenwood decided to focus on index arbitrage, which is when a trader buys (long) all of the stock in an index and sells (short) corresponding futures against the index. The firm made a profit on the spread between the dividends on the long position and the cash from the sale of futures, on the one hand, and the interest expense on the value of the positions, on the other hand. The strategy proved successful; assets under management increased from $4 million to $65 million.

At the same time, Walsh and Greenwood became involved in mergers and acquisitions. In or about 1988, WG launched a bid to take over sports apparel manufacturer Champion Products. WG had a sizeable position, but was outbid by a larger corporation. Although they did not acquire the company, WG made a sizeable profit on the transaction. In or about 1989, WG tried to launch a bid to take over shoe manufacturer Stride Rite. Again WG did not acquire the company, but made a large profit on the trades. In or about 1990, WG succeeded in the attempt to acquire Signal Apparel ("Signal"). As will be discussed below, this transaction proved disastrous for WG.

Also, in or around 1990, Walsh and Greenwood transferred the assets held in WG Trading Advisors (their predecessor entity) and created WG Trading. At the same time, they created WG Investors, which became a limited partner in WG Trading. Thereafter, although the limited partnership agreements contained extremely broad language that gave the general partners (Greenwood and Walsh) wide discretion over the scope of the investments, the investors were told that their money would be invested in the index arbitrage strategy.

In or about 1990 or 1991, Tim Barba ("Barba"), who was then the CFO of WG Trading, set up a structure where the illiquid assets or problem assets would be held by WG Investors and the liquid assets would be held by WG Trading. The idea was that WG Trading, which was regulated and audited, would have clean books and records. Anything unusual or questionable would be held by WG Investors, which was neither regulated nor audited.

B. Marketing To Investors

In or about 1996, Greenwood and Walsh started working with James Carder ("Carder"), and the three men formed Westridge Capital Management ("Westridge"). Over time, Westridge became the marketing vehicle for WG Trading and did the vast majority of the initial marketing to institutional investors. In addition, Westridge handled the futures portion of the investments, but the accounts themselves were maintained at an independent brokerage firm chosen by the investors. From time to time, the market would shift and the investors would have to meet margin calls. In those cases, WG Investors would transfer funds to the customer's futures account to meet the margin calls.

In or about 2002, Greenwood, Walsh, and Carder, with the help of a marketing consultant, developed a written presentation for investors that was used to describe the index arbitrage strategy. The written presentation, which was used in almost all of the client solicitations, represented that the sole investment strategy employed by WG Trading and WG Investors was the index arbitrage strategy.

In connection with the marketing efforts, Carder hired Jack Reynolds ("Reynolds") in California, and Walsh hired Mark Bloom ("Bloom") in New York.[1] Bloom and Reynolds were cold-callers who would identify institutional investors who might be interested in the strategy. After the client had met with Reynolds and Carder, and had indicated an interest in the strategy, Greenwood would meet with the client and provide more information about the strategy. Walsh attended investor presentations until the early 2000s, especially in Europe. There came a time, however, when Greenwood and Carder decided that Walsh should not attend any more presentations because he often went "off the script" and the clients did not understand what he was saying.

Greenwood did not like either Reynolds or Bloom because he thought they were retail salesmen and he thought they were promising investors guaranteed returns. However, Carder supported Reynolds and Walsh supported Bloom. Eventually, Bloom left WG Trading in or about 2001, but Walsh insisted upon a generous severance package for Bloom that was worth several million dollars

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[1] On February 25, 2009, Bloom pleaded guilty, pursuant to a cooperation agreement, to securities fraud and wire fraud for his fraudulent conduct from approximately 2001 to 2009 in connection with a hedge fund that he controlled. (United States v. Bloom, 09 Cr. 367 (JGK)). Prior to his arrest, Bloom approached Walsh for a loan of several million dollars, with which Bloom hoped to repay one of his investors who was complaining about their investment in Bloom's fund. Walsh told Greenwood that he wanted to make the loan because he was concerned that Bloom knew about the fraud, but Greenwood refused. Bloom is scheduled to be sentenced by Judge Koeltl in March 2015.

Each year/month, the investors would receive a statement that set forth the performance of their investment. The statements were compiled and sent to investors by Westridge. Westridge personnel would calculate the return on the futures portion of the investment and would incorporate information provided by WG Trading concerning the cash management portion of the investment. Each month, Greenwood would calculate the rate of return that would be reported to investors. The rate of return was an arbitrary figure and was not accurate. Among other things, it failed to include the expenses that WG Trading had improperly allocated to WG Investors. Greenwood had frequent discussions with Walsh in which Walsh argued that they should report a higher rate of return.

C. Use of Investor Money For Unauthorized Investments

In August 1992, Walsh and Greenwood, and two friends of Walsh (Robert Rosenthal and Ralph Palleschi) purchased a controlling interest in the New York Islanders hockey team for approximately $10 million. Walsh was the driving force behind the acquisition. Greenwood acknowledged that Greenwood and Walsh put up $2.6 million from WG Trading investor funds. Greenwood acknowledged that, although it was well-known that he and Walsh had bought the team, the investors did not specifically understand that their funds were used to invest in a hockey team. The investment was successful because the Islanders had a favorable television contract. In October 1996, Walsh and Greenwood sold their interest in the Islanders for a profit.

During this same time period, Walsh and Greenwood had several investments (including the Islanders) which were not liquid and which were not consistent with the index arbitrage strategy that was being pitched to investors.

Also, during this time period, the investment in Signal began to lose significant amounts of money. Signal's bank demanded that Walsh and Greenwood guarantee a loan to Signal. Walsh and Greenwood caused WG Trading to guarantee a $25 million loan. They used WG Trading to guarantee the loan because WG Trading had audited financial statements, whereas WG Investors did not. The loan guarantee was not disclosed to investors. On September 3, 2002, WG Trading paid the bank $25 million pursuant to the guarantee agreement. In addition, Walsh and Greenwood diverted other investor funds to Signal in an effort to salvage the investment. In total, Walsh and Greenwood lost approximately $100 million on the Signal investment. Barba moved the Signal investment to the books of Trading Investors in order to keep WG Trading's books clean. The Receiver has calculated that the failed investment in Signal amounted to approximately $198 million.

D. Misappropriation Of Funds And Use of Promissory Notes To Conceal The Fraud

Greenwood and Walsh each took money from WG Investors for their own personal use. Each one was aware that the other was taking money, and they discussed the issue frequently. Greenwood acknowledges that he used the funds to finance his lifestyle. Among other things, Greenwood used investor funds to build his house, buy and operate a horse farm, and buy antiques and collectibles (such as rare books and Steiff teddy bears). In total, Greenwood took approximately $80 million for his personal benefit, and Walsh took approximately $50 million for his personal benefit.

Walsh traveled extensively, provided financial support for one son's restaurant business and the other son's real estate business, and paid his ex-wife an exorbitant amount of money to settle the divorce. In addition, Walsh and Greenwood accounted for expenses related to WG Trading through WG Investors. These expenses included: partnership legal expenses; travel and entertainment expenses; interest expenses; salaries; and depreciation. The transfer of these expenses from WG Trading to WG Investors effectively boosted WG Trading's earnings. The fact that the expenses were transferred from WG Trading to WG Investors was obliquely referenced in a footnote that was inserted into WG Trading's audited financial statements. However, Greenwood knew that the books and records of the company were not correct and that he had overstated WG Trading's earnings.

In or about 1996, at Barba's suggestion, Walsh and Greenwood began to execute promissory notes to reflect their withdrawals and the expenses that they had transferred from WG Trading to WG Investors. At the end of each year, Deborah Duffy calculated the amount of money that Walsh and Greenwood had taken from WG Investors plus the expenses that had been transferred to WG Investors, and prepared demand notes for Greenwood and Walsh to sign in favor of WG Investors.[2] The amount of Greenwood's note would be his withdrawals plus half of the expenses. The amount of Walsh's note would be his withdrawals plus half of the expenses. Greenwood relied upon Duffy and never questioned her calculations. Duffy sometimes confronted Greenwood about the size of his withdrawals.

The notes were carried as receivables on WG Investors' books. Thus, although WG Investors did not prepare annual balance sheets, if it had, these notes would have been listed as assets. Greenwood, Walsh, and Barba all understood that the notes were simply a way to account for the shortfall caused by the misappropriation of funds and the manipulation of earnings.

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[2] Since Greenwood and Walsh were the general partners of WG Investors, they would determine when WG Investors would demand payment of the notes.

E. 2008 Results

2008 was a very successful year for WG Trading. Due to low interest rates, WG Trading's interest expenses were extremely low and its trading profits increased dramatically. Greenwood and Walsh did not report the increased earnings to investors, however, because they wanted to use the extra profit to put back some of the cash they had stolen. Greenwood had numerous conversations with Walsh and Barba about putting money back into WG Trading and WG Investors to pay back some of the money they had misappropriated. Greenwood stated that it was "easier to take the money out than to put it back in" because any transactions that could be devised to add capital back into WG Investors would have raised questions as to the origin of the funds, and might have led to the discovery of the fraud. Ultimately, Greenwood and Walsh did not pay down their debt to WG Investors.

In late 2008 and early 2009, the market changed. At that time, they began to see a dramatic increase in margin calls. The margin calls became so extensive that WG Investors began running low on cash. Accordingly, they had to transfer funds from WG Trading to Westridge to meet margin calls that investors were incurring in the futures accounts that were overseen by Westridge.

F. 2009 National Futures Association Examination

In February 2009, the National Futures Association ("NFA") conducted an examination of WG Trading. Greenwood initially did not believe that there was anything unusual about the NFA examination. However, once the examiners began asking questions about WG Investors, Greenwood knew that the exam was not routine and that the NFA examiners were specifically focusing on WG Investors. Greenwood also became concerned because he knew that WG Investors's records would contain evidence of the fraud. Although Greenwood initially told the examiners that WG Investors was not a regulated entity, he eventually told Duffy to provide the examiners with all of the information they requested.

Greenwood had frequent conversations with Walsh about the NFA examination. During the conversations, they both discussed the fact that the examination would reveal their fraudulent scheme and that they would likely go to jail. Walsh and Greenwood also met with lawyers from Dechert concerning the situation. Because he knew that the NFA examiners were likely to ask questions that would lead to the discovery of the scheme, Greenwood avoided going to the office and speaking to the examiners. Greenwood went back to the office early one morning to retrieve some personal effects, and he backed up his computer files to an external hard drive, which he left in the office.

During the audit, the NFA examiners found, among other things, the promissory notes that Greenwood and Walsh issued in favor of WG Investors, as well as evidence that Duffy had recorded approximately $8.2 million in "employee advances" attributable to Greenwood and

Walsh for 2008 and 2009, which had not yet been converted to a promissory note. The notes and the employee advances were listed as assets on the books of WG Investors. Because these notes and advances raised suspicions of impropriety, and because Greenwood and Walsh were refusing to communicate with the examiners, the NFA staff notified the CFTC and the Government of what they had found, and suspended Greenwood's and Walsh's licenses to act as commodities dealers.[3]

II. Greenwood's Cooperation

In the spring of 2009 and within several months after his arrest, Greenwood decided to cooperate with the Government. As detailed below, Greenwood thereafter substantially assisted in the Government's investigation—including meeting with Government during at least seven proffer sessions and several times in advance of a pre-trial *Monsanto* hearing, and by assisting the Receiver, after his arrest but before his guilty plea, to locate all possible assets for liquidation.

A. Legal Framework

Section 5K1.1(a) of the Guidelines provides that the Court is to consider the following five, non-exclusive factors in deciding upon "[t]he appropriate reduction" from the otherwise applicable sentencing range:

(1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
(2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
(3) the nature and extent of the defendant's assistance;
(4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance; and
(5) the timeliness of the defendant's assistance.

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[3] On February 12, 2009, the NFA issued a Notice of Member Responsibility Action (the "MRA"), which, in substance: (a) suspended Greenwood and Walsh from NFA membership until further notice; (b) prohibited Greenwood and Walsh, and any person acting on their behalf, from soliciting any customer or pool participant funds, or placing any trades in any pools or accounts that they control (other than liquidating trades); (c) prohibited Greenwood and Walsh, and any person acting on their behalf, from disbursing or transferring any funds from any accounts (bank, trading, or other accounts) that either one owns or controls, without prior approval from NFA; and (d) required Greenwood and Walsh to provide notice of the MRA to all pool participants in any commodities pool which Greenwood and Walsh operated or controlled.

As set forth above, in the Government's evaluation, Greenwood's assistance has been substantial.

B. Greenwood's Cooperation

Without doubt, Greenwood provided substantial assistance. Prior to his April 2014 guilty plea, Walsh had taken an antagonistic posture and gave every indication that he would proceed to trial. Had Walsh gone to trial, Greenwood's testimony against would have been critical and devastating. That testimony was explored deeply during no less than seven proffers sessions between the Government and Greenwood, between about May 4, 2009 and March 3, 2011. During each proffer session, Greenwood provided clear and credible evidence that was thoroughly corroborated. Based on those proffers sessions, the Government made the determination that Greenwood would present powerful evidence at trial against his business partner, Walsh. Indeed, Greenwood was Walsh's principal business partner and offered direct evidence about what Walsh did and why he did it. Although the case against Walsh was strong—because his misappropriation of funds cannot seriously be disputed—Greenwood's cooperation nevertheless materially strengthened it.

First, Walsh had limited interaction with the investors and was expected to claim that he did not make false representations to them. Greenwood would have testified that Walsh was involved in preparing the materials given to investors, and that Walsh was aware of the false performance figures that were reported to investors. *Second*, Walsh was not involved in the bookkeeping for WG Trading or WG Investors and could have claimed that he did not know the facts surrounding the company's finances. Greenwood, on the other hand, could have testified that he had numerous conversations with Walsh in which both men manifested an awareness of their misuse and misappropriation of investor funds. *Third*, Greenwood would have been the only Government witness at trial who could have provided a detailed and comprehensive narrative of the multi-year fraud, and Walsh's critical—and knowing—role in it.

Furthermore, Greenwood assisted the Government substantially in its preparation for the pre-trial *Monsanto* hearing before this Court. Though Greenwood did not testify, he helped prepare the Government and the FBI agent for the hearing. But for Greenwood's cooperation and candor during those pre-hearing preparation sessions, the Government would not have been able to put on the thorough and convincing evidence it did before this Court.

Lastly, since February 2009, Greenwood aided the Government and the Receiver in investigating the finances of WG Trading and WG Investors, and in marshaling the assets that have been and will be available for victims. In connection with the lengthy investigation by the Receiver, Greenwood made available information to the Receiver, which—to date—has permitted the Receiver to recover close to 90 percent of the investors claims—or about $900 million. In particular, the Receiver met with Greenwood on several occasions, and Greenwood answered questions pertaining primarily to the location of the various defendants' business records, as well as the location of corporate assets and the individual defendants' assets subject to the Receivership Orders. Further, Greenwood assisted with the Receiver's requests for the turnover of the business records, and Greenwood responded to questions and requests for documents concerning their individual assets as necessary for the Receiver to effectuate its duties under the Receivership Orders. According to the Receiver, Greenwood aided the Receiver with its efforts to recover the substantial funds that have been returned to investors.

C. Willingness to Testify

Since he began cooperating, Greenwood has stood willing to testify. He has not yet been asked to do so, but that is through no fault of Greenwood. Given Greenwood's consistent record of truthfulness, in the Government's estimation, Greenwood would have made a credible and compelling witness at trial. It is often difficult, in such situations, to accurately weigh or measure the significance of such cooperation in the abstract, but as the Court is aware, individuals like Greenwood who come in to proffer with the Government, admit their criminal activities without promise or guarantee that it will ever impact their sentence, and plead guilty to criminal conduct, are a crucial part of the Government's law enforcement efforts.

III. Conclusion

Based on the foregoing, the Government has determined that Greenwood has provided extensive substantial assistance to the Government in the investigation and prosecution of other persons who committed federal offenses. Accordingly, the Government respectfully requests, pursuant to Sentencing Guidelines Section 5K1.1, that the Court sentence Greenwood in light of the facts stated above and the factors set forth in Section 5K1.1(a)(1)-(5) of the Sentencing Guidelines.

Respectfully submitted,

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/s/
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